

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs January 30, 2008

STATE OF TENNESSEE v. CARSON M. HARR AKA “REECEY” HARR

**Direct Appeal from the Criminal Court for Sullivan County
No. S52,062 R. Jerry Beck, Judge**

No. E2007-01678-CCA-R3-CD - Filed April 30, 2008

The appellant, Carson M. Harr, pled guilty in the Sullivan County Criminal Court to robbery and aggravated burglary, and was sentenced to concurrent sentences of three years and eight years respectively. The appellant requested alternative sentencing, which request was denied by the trial court. On appeal, the appellant argues that the trial court erred by not granting alternative sentencing. Upon our review of the record and the parties' briefs, we affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court are Affirmed.

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which J. CURWOOD WITT, JR., and D. KELLY THOMAS, JR., JJ., joined.

Terry L. Jordan, Blountville, Tennessee, for the appellant, Carson M. Harr.

Robert E. Cooper, Jr., Attorney General and Reporter; Leslie E. Price, Assistant Attorney General; H. Greeley Wells, Jr., District Attorney General; and James F. Goodwin, Jr., Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Factual Background

On July 19, 2006, the Sullivan County Grand Jury indicted the appellant for aggravated robbery and aggravated burglary. After plea negotiations, the appellant pled guilty to robbery and aggravated burglary, both Class C felonies. At the guilty plea hearing, the State recited the following factual basis for the pleas:

[O]n March the 18th, 2006, Detective David Cole of the Kingsport Police Department responded to 513 Grenada Court in Kingsport, Sullivan County, Tennessee, to investigate a reported robbery.

The victim, India Graves, advised that she was home alone at about ten to 10:30 a.m. when she answered the door. She observed the defendants, Delishia Ford and Carson Harr [the appellant], both of whom she knew, at the door. She allowed them inside the home. They asked for her stepfather, Danny Hall. . . .

Mr. Hall was not at home. Both subjects conversed with Ms. Graves until Ms. Ford displayed a handgun. After that . . . [the appellant] displayed a handgun, and both asked Ms. Graves where Mr. Hall kept the safe. Ms. Graves told them that there was a lockbox in the rear bedroom which had a padlock on the outside of the door.

. . . [The appellant and Ford] went to the back door, fired at the lock. The room was unoccupied. He fired at the lock to open the padlock.

[The appellant] and then Ms. Ford, who joined him at that point, entered the room, searched, and did not find a lockbox. They then fled the home. It was later discovered during the investigation that Ms. Ford and [the appellant] had taken \$80 in cash from the living room table.

And that would have been the State's case. Ms. Graves was not injured during this incident.

The plea agreement provided that the trial court would determine the manner of service of the sentences.¹

At the sentencing hearing, the trial court noted that the presentence report reflected that the appellant was twenty-one years old at the time the report was prepared. The report reflected that the appellant had committed a number of criminal acts as a juvenile, including some which would have been felonies had the appellant been an adult. The appellant continued to commit crimes as an adult, namely one conviction for evading arrest, two convictions for possession of marijuana, two convictions for misdemeanor failure to appear, and four convictions for trespassing. As an adult, the appellant had received probation seven times. The report also reflected that the appellant dropped out of high school, but he claimed that he later earned his general equivalency diploma (GED); at the time of the sentencing hearing, the probation officer who prepared the report had been

¹ Pursuant to the plea agreement, the trial court sentenced the appellant as a standard Range I offender to three years for the aggravated burglary conviction. On the robbery conviction, the appellant agreed to be sentenced to eight years as a Range II offender, with a Range I release eligibility of thirty percent. See State v. Hicks, 945 S.W.2d 706, 706 (Tenn. 1997).

unable to verify whether the appellant had in fact earned his GED. The appellant told the probation officer that he had used marijuana since he was thirteen years old and cocaine since he was eighteen years old.

The appellant did not testify at the sentencing hearing. However, the appellant's counsel told the court that if the appellant were released on probation, he would live with his girlfriend's father.

The court noted, "The amazing thing, he could get arrested that many times and be on probation so many times, suspended sentences so many times in that short period of time. The reason that's important, when you start looking forward, is there anything going to be any differen[ce] if the Court places him on probation or alternative sentencing. And I have no indication they would, that it would accomplish much." The court expressed concern about the nature of the offense, specifically the discharge of a firearm while someone was in the home. The court noted that the appellant's work history was poor and that he was allowed to plead to a lesser offense. Based upon the foregoing, the trial court denied alternative sentencing. On appeal, the appellant challenges that ruling.

II. Analysis

Appellate review of the length, range or manner of service of a sentence is de novo. See Tenn. Code Ann. § 40-35-401(d) (2006). In conducting its de novo review, this court considers the following factors: (1) the evidence, if any, received at the trial and the sentencing hearing; (2) the presentence report; (3) the principles of sentencing and arguments as to sentencing alternatives; (4) the nature and characteristics of the criminal conduct involved; (5) evidence and information offered by the parties on enhancement and mitigating factors; (6) any statement by the appellant in his own behalf; and (7) the potential for rehabilitation or treatment. See Tenn. Code Ann. §§ 40-35-102, -103, -210 (2006); see also State v. Ashby, 823 S.W.2d 166, 168 (Tenn. 1991). The burden is on the appellant to demonstrate the impropriety of his sentences. See Tenn. Code Ann. § 40-35-401, Sentencing Commission Comments. Moreover, if the record reveals that the trial court adequately considered sentencing principles and all relevant facts and circumstances, this court will accord the trial court's determinations a presumption of correctness. Id. at (d); Ashby, 823 S.W.2d at 169.

An appellant is eligible for alternative sentencing if the sentence actually imposed is ten years or less. See Tenn. Code Ann. § 40-35-303(a) (2006). The appellant's sentences meet this criteria. Moreover, an appellant who is an especially mitigated or standard offender convicted of a Class C, D, or E felony should be considered a favorable candidate for alternative sentencing absent evidence to the contrary. See Tenn. Code Ann. § 40-35-102(6). The following sentencing considerations, set forth in Tennessee Code Annotated section 40-35-103(1), may constitute "evidence to the contrary":

(A) Confinement is necessary to protect society by restraining a defendant who has a long history of criminal conduct;

(B) Confinement is necessary to avoid depreciating the seriousness of

the offense or confinement is particularly suited to provide an effective deterrence to others likely to commit similar offenses; or

(C) Measures less restrictive than confinement have frequently or recently been applied unsuccessfully to the defendant.

State v. Zeolia, 928 S.W.2d 457, 461 (Tenn. Crim. App. 1996). Additionally, a court should consider the defendant's potential or lack of potential for rehabilitation when determining if an alternative sentence would be appropriate. See Tenn. Code Ann. § 40-35-103(5).

In the instant case, the appellant is a standard Range I offender convicted of Class C felonies; therefore, he is considered to be a favorable candidate for alternative sentencing. However, our review of the record reveals that the trial court was greatly concerned with the appellant's rehabilitative potential. Specifically, the court noted that since becoming an adult, the appellant had amassed several misdemeanor convictions and had received numerous probationary sentences. Therefore, measures less restrictive than confinement have recently and repeatedly failed to reform the appellant's conduct. In other words, despite his repeated convictions and the largess of the courts, the appellant has continued to violate the law, proving that he is unable to conform his behavior to comply with the law. As this court has said, "[a] felon's rehabilitation potential and the risk of repeating criminal conduct are fundamental in determining whether he or she is suited for alternative sentencing." State v. Keen, 996 S.W.2d 842, 844 (Tenn. Crim. App. 1999). We find no error in the trial court's denial of alternative sentencing.

III. Conclusion

Based upon the foregoing, we affirm the judgments of the trial court.

NORMA McGEE OGLE, JUDGE